

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

1940 ROUTE 9, LLC,

Plaintiff,

v.

TOWNSHIP OF TOMS RIVER, NEW  
JERSEY,

Defendant.

Civ. No. \_\_\_\_\_

**COMPLAINT**

Plaintiff 1940 Route 9 LLC, by its undersigned attorneys, complain of Defendant Township of Toms River, as follows:

**NATURE OF ACTION**

1. This action is commenced by Plaintiff to redress violations of its civil rights, caused by the Defendant's discriminatory use of its eminent domain power to prevent Orthodox Jews from residing in the Township of Toms River by preventing Plaintiff from purchasing property and developing homes within in the Township, in violation of the Equal Protection Clause of the United States Constitution, 42 U.S.C. § 1983, the Fair Housing Act, 42 U.S.C. § 3604 ("FHA"), the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, and New Jersey State Law.

2. Plaintiff contracted to purchase land for residential development in the North Dover neighborhood of Toms River where there a high demand for housing among Orthodox Jews. The North Dover neighborhood borders Lakewood Township which has a large Orthodox Jewish population. In recent years, Orthodox Jews have been moving to the North Dover neighborhood in increasing numbers. To prevent the further development of housing for Orthodox Jews in North Dover, the Township condemned the property through eminent domain.

3. This recent action to prevent Orthodox Jews from residing in Toms River took place during a rising tide of anti-Semitism among the Toms River government and population, fearful that the Orthodox Jewish community located in the adjacent Lakewood Township would extend into their jurisdiction. In March 2016 the Township's Mayor, Thomas Kelaher, was quoted as describing Orthodox Jews moving into Toms River as an "invasion," regarding which he later stated: "I have nothing to apologize for. . . . I don't feel like I did anything wrong."

4. Significant evidence of the anti-Semitic hostility of Toms River residents has frequently appeared online in petitions, on social media and news websites, where statements referred to Orthodox Jews as "cockroaches," "parasites," a "cult," "damn jews," "dirty," and a "disease." On a petition signed by 5,095 people, one Toms River resident stated: "Keep these damn jews out of Toms River.. There will be issues if this passes... I promise." In February 2016, the words "Burn the Jews" were scratched into playground equipment at Riverwood Park in Toms River. Not only did this incident fail to raise outrage in the local community, but many published local comments were more sympathetic to the perpetrators than to the Jewish population.

5. The Township's actions were motivated by religious animus and have effectively impeded the ability of Jews to move into the Township. Toms River has intentionally

discriminated against Orthodox Jews by prohibiting the development of housing within Toms River because of religion.

#### **JURISDICTION AND VENUE**

6. The subject matter jurisdiction of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. § 3604, 42 U.S.C. § 1983, and 42 U.S.C. § 2000cc *et seq.* This Court also has supplemental jurisdiction over Count III under 28 U.S.C. § 1337(a) for claims brought under New Jersey law.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) in that all of the events giving rise to the claims herein occurred in this District and the Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

#### **PARTIES**

8. Plaintiff 1940 Route 9, LLC ("Route 9") is a Limited Liability Corporation located in Ocean County, New Jersey, with an address of 2 Debra Way, Lakewood, New Jersey 08701.

9. Defendant TOWNSHIP OF TOMS RIVER, N.J. ("Township" or "Toms River") is a municipal corporation of the State of New Jersey, having offices at 33 Washington Street, Toms River, New Jersey 08753.

#### **FACTUAL ALLEGATIONS**

##### The Development

10. The members of Route 9 are Eli Yenay and Mayer Kesserman.

11. Eli Yenay and Mayer Kesserman are both Orthodox Jews.
12. On December 22, 2015, Route 9 entered into a contract with Guttman Family LLC (“Guttman LLC”) to purchase approximately 35 acres of land on 1940 Lakewood Road, Lots 11, 17, 18, 19 and 32 on the Tax Map of the Township, designated as Block 171 (the “Property”).
13. The Property is zoned Rural Highway Business and Rural Residential.
14. Route 9 intended to develop the Property as a residential development, including townhouses, an apartment building, and a 3600-square foot clubhouse (“the Development”).
15. There is a great need for housing among the Orthodox Jewish population in the Toms River area.
16. Orthodox Jews from neighboring townships such as the Township of Lakewood, which has a large Orthodox Jewish population, have been purchasing homes in Toms River and in the North Dover neighborhood in growing numbers in recent years.
17. Route 9 planned to develop and sell townhouses on the Property with amenities such as kosher kitchens and multiple bedrooms that would be desirable for Orthodox Jewish families.
18. With the increasing demand for housing in Toms River among the Orthodox Jewish population, Orthodox Jews would likely purchase new housing units in the Development, especially if provided certain amenities that would accommodate their religious faith.
19. The Development was to be the first of its kind in the North Dover neighborhood with such amenities.

20. Route 9 also planned to develop a 3600-square foot structure on the Property that was to be used for religious purposes. The clubhouse was intended to be a place where residents could assemble for religious worship, prayer and study.

21. This structure would be a religious assembly use.

22. The structure would likely have been used by Orthodox Jewish residents.

23. The Development was permitted as a “by right” use in the zoning districts where the Property is located.

24. No variances would have been required for the Development.

25. The Property is located in the “North Dover” neighborhood of Toms River near the border with the Township of Lakewood.

26. On March 23, 2016, Harvey York and Graham Macfarlane, representatives of Route 9, met with Township Planner Jay Lynch to discuss the proposed development.

27. The Township became aware that the Property was under contract to be sold to Orthodox Jewish developers.

#### Condemnation Action

28. Twenty days after the March 23, 2016 meeting with the Township Planner, on April 12, 2016, the Township Council members voted five to zero to introduce an ordinance allocating money for the purchase of the Property, as well a companion measure authorizing the acquisition of the Property through purchase or eminent domain.

29. On April 26, 2016, the Township approved Ordinance No. 4508-16 to acquire Block 171, Lots 11, 17, 18, 19, 20, 21, 22, 23 and 32 on tax maps by purchase or eminent

domain. This block includes the Property and several other lots which were owned by other individuals and entities.<sup>1</sup>

30. Ordinance No. 4508-16 stated in part that the purported “purpose of this Ordinance is to promote the Township’s Master Plan goal of providing adequate open space for present and future use, and to develop passive and active recreational use.”

31. Although the Subject Property was condemned by the Township for the alleged purpose of “providing adequate open space for present and future use, and to develop passive and active recreational use,” Township Administrator Paul J. Shives was reported to have stated: “We have no immediate recreation needs for [the Property].”

32. The Township did not have enough money in its Open Space Trust Fund to buy the land, and needed to bond for the purchase.

33. The Township’s Master Plan states, under its Statement of Goals, under the Goals and Objectives section of the Master Plan, “The Township . . . seeks to achieve an overall balance between the preservation of its natural resources and its residential and economic development . . . Preserving much of the remaining open space within the Township is crucial to sustaining its natural resources.”

34. Preserving open space is stated as a goal of the Land Use Element of the Township’s Master Plan.

35. In May 2016, an appraisal of the Property requested by the Township was conducted for the purpose of determining compensation for the taking of the Property.

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<sup>1</sup> Ordinance No. 4508-16 was subsequently amended to include Lot 42 which was inadvertently omitted from Ordinance.

36. On July 11, 2016, the Township, through its attorney, made an offer to Guttman LLC to purchase the Property. The Township advised that unless its offer was accepted within fourteen days that it intended to utilize its power of eminent domain to acquire the Property.

37. On December 15, 2016, Route 9 submitted a Notice of Tort Claim Against Public Entity to the Township for the tortious interference with Route 9's contract with Guttman LLC.

38. On February 3, 2017, the Township filed a Complaint in the Superior Court of New Jersey against Defendants, Guttman LLC and Route 9 to acquire the Property through condemnation.

39. On June 28, 2017, the Township issued a Declaration of Taking, which stated in part that the Property "is hereby taken by and for the use of the State of New Jersey. The Township of Toms River is entitled to the possession and use of the premises aforesaid, and will forthwith enter into and take possession of them pursuant to the provision of the N.J.S.A. 20:3-7, et seq., and N.J.S.A. 12:3-64, et seq."

40. On August 16, 2017, Guttman LLC filed a Motion for Withdrawal of Deposit Monies and Dismissal of Certain Defendants.

41. On October 23, 2017, Judge Marlene Lynch Ford of the Superior Court of New Jersey issued a decision granting Guttman LLC's motion to dismiss the complaint against Route 9 for lack of standing.

42. On October 25, 2017, Route 9 filed a Motion for Reconsideration of the Court's October 23, 2017 Order.

43. On January 8, 2018, Judge Ford denied Route 9's Motion for Reconsideration of the Order.

44. On January 26, 2018, Judge Ford executed an Amended Order for Final Judgment certifying the January 8, 2018 Order for Final Judgment to be a Final Order, thus allowing Route 9 to file an appeal as of right.

45. On or about February 1, 2018, Route 9 filed a Notice of Appeal of the January 26, 2018 Amended Order for Final Judgment with the New Jersey Superior Court, Appellate Division.

46. There is currently various open space in the form of parks and undeveloped parcels of land in North Dover, including the nearby Riverwood Park.

47. The Township has no compelling need for additional open space.

48. The Township's purported interest in "open space" is pretext for discrimination against Orthodox Jews.

49. Upon information and belief, in the last couple of years, at least 1,400 units of housing have been either under construction or approved to be built in northern Toms River.

50. The Township has recently permitted other developers to construct residential developments in the North Dover area, including Gabrielle Run, Hickory Pines, Riverwood Chase, and Autumn Ridge at Toms River Apartments.

51. Upon information and belief, none of the developers who received approval to build are Orthodox Jewish developers, and none have built or have plans to build units with amenities such as Kosher kitchens needed by Orthodox Jewish families.

52. Upon information and belief, the Gabrielle Run development includes a "Magnificent 7,370 sq. ft. Lifestyle Center clubhouse."

53. As a result of the condemnation, Plaintiff could not carry out the terms of its contract with Guttman LLC, could not acquire the Property for purposes of the Development,

and could not develop housing in Toms River where housing is in high demand, particularly among Orthodox Jews.

Hostility Toward Orthodox Jews in Toms River

54. Significant hostility against Orthodox Jews exists on the part of the government and residents of Toms River.

55. The Township has been responsive to local Toms River residents' hostility toward Orthodox Jews.

56. Toms River Mayor Thomas Kelaher was quoted in March 2016 as saying "It's like an invasion," referring to Orthodox Jews moving into Toms River.

57. Mayor Kelaher's statement was condemned by the Anti-Defamation League and Agudath Israel of America.

58. Mayor Kelaher further stated: "Let's assume that I used that word. What I was referring to is the sworn testimony of neighbors in the North Dover area, who testified and used that term, that they feel like it's an invasion. That's the context in which I used it. The people who live there think that."

59. Mayor Kelaher was also quoted as saying that Orthodox Jews are trying to buy homes in his town and that if local homeowners don't sell, they will be the only non-Orthodox left.

60. Mayor Kelaher was further quoted as saying "[y]ou know what's going on in Lakewood, they want to make it the Yeshiva capital of the world and God bless them if they do, but they're using up all the space in Lakewood and they're spilling over."

61. Campaign materials sent by the Committee to Re-Elect Tom Kelaher Mayor, Carmen Memoli Treasurer have included statements such as “While Treasurer of the Lakewood Democrats, Pontoriero Team Council Candidate Michael Bateman helped raise tens of thousands of dollars from the special interests who helped shape Lakewood into what it has become today. . . . On November 3rd say NO to The Pontoriero/Bateman Democrats Toms Rivers [sic] Future depends on it !” (Emphasis in original.)

62. In 2014, the Toms River Township Council spent \$1,514,730 to purchase 7.2 acres near the Lakewood border where Lakewood developer Charles Silberberg planned to build a 3,000-square-foot synagogue. Silberberg had purchased the vacant land for \$350,000 in 2012. When Silberberg’s first proposed the project, the land was zoned for rural highway business, which at the time allowed churches and synagogues to be built in the area. However, in August 2014, the council rezoned the land for residential use, and as a result, church and synagogue use was no longer permitted on the land.

63. On March 1, 2016, the words “Burn the Jews” were carved into playground equipment at Riverwood Park in Toms River.

64. Concerning that incident, a Toms River police department spokesman stated: “An investigation was opened and we are trying to determine if this graffiti was done by ignorant teenagers or was of a more direct and sinister nature directed at the Jewish faith,” suggesting that the statement “Burns the Jews” could be interpreted as anything other than a statement “of sinister nature directed at the Jewish faith.”

65. Later in March 2016, more graffiti was found at Riverwood Park where a bench was defaced with the words “Jews go back to Lakewood.”

66. Comments on local media websites made regarding the “Burn the Jews” incident include:

- “Drive one day in Lakewood around 9 am or Friday afternoon around 2 and you will see why no one wants them in their area!”
- “The Orthodox Jewish extremists are making their way into Manchester Hollyoaks park. Give it 20yrs. And Manchester Twp. Will turn into next Lakewood. The Orthodox tried to pulled some stunt in Jackson a couple of years ago only to have their children in the public park two days out of the week, that didn't fly with the local residents of Jackson Twp. It went to litigation and did not pass. Even the State of Israel has a major problem with them. The bad part of this is the Orthodox go by their own Jewish laws and do not agree with the American laws. Write to your congressman, senators, local officials and complain! How about when summer comes along and your children want to play in the water to cool down, to have a Orthodox man tell your children to cover up their swimwear, because it offends their religion. How about LAKEWOOD build their own park.”
- “Oh no, who gives a s#!t? Honestly, who cares? Get over it. It's not threatening at all, what you have is some stupid kids in the 12-16 age group thinking their edginess is hilarious. The fact that they're even making an issue about this is ridiculous. And to top it off, the other comments are right. The TR park is for TR residents. Not Lakewood ones.”
- “[O]ne of the main things that [the Mayor] is missing here is that Riverwood Park along with all of the other parks in Toms River Township is the for the RESIDENTS OF TOMS RIVER. It is clearly posted on the rules of the park but apparently these rules do not apply to the residents of Lakewood, who do NOT pay taxes in Toms River (nor their own town of Lakewood) but want to use the facilities of those provided by the tax payers. . . . [T]hose that have voted for him and pay taxes in Toms River protect the parks and recreational areas that we the citizens of Toms River pay for and want to enjoy but can't because they are overrun by people who do not belong in the Township Parks”
- “It's pretty sad, when we New Jersians can't tell the difference between some dumb kids scribbling some misspelled garbage on a kids playset, and an actual hate crime, . . . . Besides, nine times out of ten these so-called hate crimes are self inflicted. Look up the statistics and see for yourselves.”

- “Probably a local parent at wits end. Did you ever go to Riverwood park, kids from Toms River can't even play there because it's overrun by out of towners.”

67. To coordinate their efforts to keep Orthodox Jews out of the Township, certain residents of Toms River started a grassroots movement called “Toms River Strong.”

68. Many Toms River residents placed lawn signs on their properties that state: “DON’T SELL! TOMS RIVER STRONG.”

69. Upon information and belief, such signs and statements are intended to prevent the Orthodox Jewish community from purchasing homes in Toms River

70. Statements regarding the “DON’T SELL!” And “TOMS RIVER STRONG” phrases used by local residents include:

- Don’t let Toms River become part of Lakewood. Don’t be sellouts and allow this to happen.
- Will not allow them to take over TR. This is our town to build and enjoy. We will not let it be taken over.. TR STRONG!

71. In early 2016, the Township held a community meeting to discuss community concerns. The Mayor and Township officials were present and hundreds of people attended. The vast majority of the meeting focused on members of the Orthodox Jewish community that were moving into the Township.

72. In February 2016, the Toms River Township Council adopted an ordinance banning real estate solicitation in the areas of North Dover bordering Lakewood Township, after residents complained about Orthodox Jewish families seeking homes in the area.

73. Township employees have also urged residents to place so-called “No Knock” stickers on their front doors which, under another recently passed Toms River ordinance, prohibits individuals from asking residents if their homes are for sale.

74. The anti-solicitation and “No Knock” ordinances were motivated by hostility toward the Orthodox Jewish population and a desire to prevent them from moving into Toms River.

75. Toms River residents have made statements indicating that such efforts were motivated by hostility towards Orthodox Jews, which include:

- The message from the meeting was abundantly and obviously clear: no Jews in Toms River. Instead of it being a mechanism to address homeowners who are being harassed, it's clear Toms River will make it very difficult for the orthodox to buy a home. Tell me, does the no knock sticker have a swastika on it?
- Jackson, Toms River, Howell and Manchester will look just like Lakewood if you allow the current disease to spread.....
- Toms river will never be the same if this happens .. These people are trying to takeover our state!

76. The Township’s active participation and encouragement of local residents not to permit members of the Orthodox Jewish community to approach them concerning real estate purchases demonstrates official hostility towards Orthodox Jews.

77. The Township has been directly responsive to individuals motivated by hostility toward Orthodox Jews.

78. In response to Ordinance 4508-16, authorizing the acquisition of the Property by eminent domain, local residents have made comments on social media such as:

- “A Good Move to close off any plans of expansion by the jews next door.....  
I approve of this Expenditure.....  
In an update on the black hats' mission to occupy toms river, Ocean Township (Monmouth county) just shot down the syrian jews' attempt to thwart zoning laws. Those rich dirty jews will now play the race card (just like Lakewood's dirty population doid)”
- “Buy the land keep the Jews out they ruined spring valley monsey and Lakewood keep them out”

- “They don't pay property taxes everyone else does especially that area taxes are probably 10 grand or more screw them worship in a synagogue”
- “Unfortunately Jews are not always the best neighbors”

79. Other anti-Semitic comments posted on online petitions, social media, and news

websites concerning Orthodox Jews moving to Toms River include:

- “Enough already. They ruined Lakewood now they're out of room and have to INVADE Toms River and soon to be Brick. I already see them riding the rental bikes in Ortley Beach. Surveying for a new host, like parasites. Stinkin cockroaches”
- “this so-called religion is an excuse NOT to pay taxes, these people seem to do anything they want and they're spreading like wildfire!!!”
- “Real simple...f\*\*k them, we have rights too!!!!”
- “When one looks at the current blighted tragedy that has turned the once proud and stately community of Lakewood into a bargain basement slum, and then factors in what the overflow of these subjects are doing in the process of recreating the same in Jackson and Toms River, one learns from simple observation that the countries surrounding Israel do have some legitimate concerns about their neighborhoods. By personal choice and actions, this type of behavior can only be viewed as public parasites feeding off of the societies of the world.”
- “These douche bags all hide behind religion”
- “The Orthodox Jewish community in Lakewood has essentially driven that town into the ground. We don't need them doing that to surrounding areas.”
- “Okay so what's wrong with being anti Jew if they are bad people? Generally for many years Christians have been extremely tolerant or the way they are treated in Israel and in other Jewish controlled areas. And Christians not directly affected didn't believe the stories and they called those who complained anti-semites even though Arabs are also semites. But most people don't have time to dig too deeply into many of the issues affecting people today and historically. But now the white Christians of Toms River are seeing the reality of Jews at the Grassroots not the reality of Jews who run all the major media, Hollywood, and academic organs ( which is just too far removed from our daily lives even though all those groups spread cultural Marxism which affects us everywhere in everything we do). Reality is easy to deny when it's far away and when nobody has the courage to criticize

it. And those who do take note of it are called names to shut them down. But now reality is trespassing in your backyard and staring at your daughters in their bikinis. Maybe now people will wake up, take notice and be honest and forthright. Virtue is rewarded. Denial leads to destruction."

- "*I'd like to share a revelation that I've had during my time here. It came to me when I tried to classify your species and I realized that you're not actually mammals. Every mammal on this planet instinctively develops a natural equilibrium with the surrounding environment but you humans do not. You move to an area and you multiply and multiply until every natural resource is consumed and the only way you can survive is to spread to another area. There is another organism on this planet that follows the same pattern. Do you know what it is? A virus. Human beings are a disease, a cancer of this planet.*'

(Agent Smith, "The Matrix")

Substitute as appropriate..."

- "Lakewood and all the other idiots who accept Jewish aggression deserve everything that's coming to them. You gotta have the guts to speak out. If the Jews are colluding to break the back of the town then it's probably a RICO violation. They're like parasites. They feed off the success created by white Western Christian civilization and promote ideas that are killing it. Many sit around moaning that Muslims and Mexicans and others don't assimilate. Jews don't assimilate either no matter where they go. Because wouldn't assimilation in a Christian civilization mean that you would eventually be Christian? After all what does assimilation mean?"
- "Since the Jews run Academia, Hollywood, the universities. And many are attorneys and politicians then I think you are pretty much F'd. But now you understand why every nation who has ever accepted Jews has eventually expelled them. Its just histor. And why so many have complained about Jews for so long . But they've been ignored or called names by those who didn't think that they were directly affected by anything. So now the chickens have come home to roost because you never said anything before now because well it was only happening to other people. Believe me nobody is coming to your rescue. This is a fight you will have to figure out how to deal with"
- "This is the smartest preemptive measure Toms River can do. Well done."
- "and the Jews r the problem. **#TomsRiverStrong #JacksonStrong**"

- “check out the Jooish situation in NJ #**tomsriverstrong**. They took our jobs...and houses.”
- “I'll take the non-foreskin chewing corruption over these dirtbags any day.”
- “The orthodox jews have destroye Lakewood. All propertis are tax exempt because all properties are 'owned' by the Church. Do not permit the 'church' to take over Toms River.”
- “They have ruined Rockland County , NY pulling this same crap, Don't let it happen in Ocean County!!!!!!”
- “I think we all need to get pigs to put on our front lawns, in our back back yards...if you are zoned agricultural, residential & commercial like we are on New Hampshire Ave....get some pigs, that will keep them all away! ;) Say YES to pork! LOL”
- “Toms River is where I grew up and I absolutely love it. I do not want to see my home town get destroyed.. Keep the Jews out!
- “They have ruined enough towns over here they will not ruin another”
- “They are like locusts. They ruin everything they touch. In short order Toms River will be broke, covered in garbage, and infested with bugs and vermin.”
- “Take a look at Lakewood and every others area they live and breed! They will ruin toms river!”
- The Jewish population as is proof in Lakewood destroys a neighborhood.
- Enough. Keep them in Lakewood.
- Keep THEM in Lakewood!! We don't need THEM taking over or town!!
- “I want no part of them in Toms River!”
- “Please don't let them destroy another town.”
- “Toms river will never be the same if this happens .. These people are trying to take over our state !”
- “Please stop this nonsense. This offshoot cult of the Jewish faith will destroy this town. Township officials need to stop worrying about being politically correct before Toms River looks like Lakewood.”

- “If I'm labeled racist /AntiSemitic by banding together and doing the right thing, not wanting a parasite to destroy the future of our next generation, then so be it.”
- “Keep these people out of Toms River please! They are dirty and we do not need their Freeloading here. Be smart!”
- “I wish all of you luck in fighting this losing battle with the Jewish community. As some one on here stated they are coming and no one will stop them. Thank you Toms River Official for destroying the once beautiful Toms River because you are to blame for not doing anything. Its So... So ....Sad”
- “So please stop the Hassidic and Jewish communities from entering our town and turning it into another Lakewood.”
- “The Orthodox Jewish community in Lakewood has essentially driven that town into the ground. We don't need them doing that to surrounding areas.”
- “Really how is it possible these people and I mean no disrespect are getting away with this they taken over Lakewood Nj and talk about not liking other cultures they won't even let any other cultures go to their schools or even they won't hirer people of other cultures to work for them”
- “Keep these damn jews out of Toms River.. There will be issues if this passes... I promise.”
- “No jews in tr”

80. The 2017 election in Toms River was reported to be “one of the nastiest elections” in recent years with development in Toms River’s northern sections dominating the debate, and resulted in a major upset in the Township Council.

81. A non-binding referendum on the ballot asked residents if Toms River should buy up to 250 acres of property for preservation or potential recreational use. The referendum was approved by an overwhelming margin of 82 to 18 percent.

82. On January 2, 2018, Councilman George Wittmann suggested that the Township ask the Toms River Municipal Utilities Authority (“TRMUA”) to conduct a sewer capacity study in the North Dover area and to impose a one-year moratorium on new development until the

study is finished. Councilman Maurice Hill, Jr. said that he is amenable to Wittmann's suggestion and that the Township should move aggressively to preserve open space.

83. In February 2018, Councilman Daniel Rodrick proposed that Toms River eliminate all zoning for multifamily homes. Councilman Rodrick asked that Township Attorney, Planner and staff draft an ordinance that would eliminate multifamily zones. Councilman Rodrick reportedly stated: "I'm still hopeful we could work together to rectify what many residents identify as a surge of development in Toms River."

84. Upon information and belief, the Township condemned the Property to prevent the development of homes that would be occupied in significant part by members of the Orthodox Jewish community.

85. Upon information and belief, the Township condemned the Property because of the principals of the Plaintiff were Orthodox Jews.

86. The Defendants' actions described above all took place under color of state law.

87. Route 9 has suffered significant damages as a result of the Defendants' actions.

88. The Township possesses no compelling interest that justified the taking of the Property.

## COUNT I

### **Violation of the Fair Housing Act 42 U.S.C. § 3604**

89. Paragraphs 1 through 88 are incorporated by reference as if set forth fully herein.

90. The Defendant, by its conduct that prevented the Plaintiff's development, has intentionally discriminated against the Plaintiff and Orthodox Jews by making housing unavailable within Toms River because of religion in violation of 42 U.S.C. § 3604(a).

91. Defendant's conduct has had the effect and continues to have the effect, whether intended or not, of excluding Orthodox Jews from obtaining housing within Toms River by discriminating based on religion, in violation of 42 U.S.C. § 3604(a).

92. Plaintiff is an aggrieved person as that term is defined in the Fair Housing Act, 42 U.S.C. § 3602(i) and Plaintiff has suffered harm, damage and injury as a result of Defendant's conduct.

## COUNT II

### **United States Constitution Violation of 42 U.S.C. § 1983: Fourteenth Amendment Equal Protection**

93. Paragraphs 1 through 92 are incorporated by reference as if set forth fully herein.

94. Defendants have deprived and continue to deprive Plaintiff of its right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against them based on religion in their land use practices.

## COUNT III

### **Violation of Religious Land Use and Institutionalized Persons Act of 2000 – “Nondiscrimination” 42 U.S.C. § 2000cc(b)(2)**

95. Paragraphs 1 through 94 are incorporated by reference as if set forth fully herein.

96. Defendants have imposed a land use regulation that discriminates against an assembly or institution on the basis of religion.

## COUNT IV

**Violation of Religious Land Use and Institutionalized  
Persons Act of 2000 — “Equal terms”  
42 U.S.C. § 2000cc(b)(1)**

97. Paragraphs 1 through 96 are incorporated by reference as if fully set forth herein.

98. Defendants have deprived and continue to deprive the Plaintiff of their right to the free exercise of religion, as secured by RLUIPA, by imposing and implementing land use regulations both on their face and as applied in a manner that treats religious land use on terms that are less than equal to nonreligious assembly and institutional land uses.

**COUNT V**

**New Jersey State Tort Claim  
Contract Performance Interfered with By Outsider**

99. Paragraphs 1 through 98 are incorporated by reference as if fully set forth herein.

100. Plaintiff Route 9 entered into a contract for the purchase of real estate from Guttman Family, LLC.

101. Defendant Township of Toms River is not a party to that contract.

102. Defendant intentionally, without justification or excuse, took actions to prevent the transfer of the subject Property from Guttman Family, LLC to Plaintiff Route 9, including but not limited to adoption of Ordinance No 4508-16 and the filing of the Declaration of Taking.

103. By taking these and other actions, Defendant prevented the transfer of the Property from Guttman LLC to Route 9 pursuant to the contract for sale of real estate entered into by those two parties.

104. Defendant has thus interfered with Plaintiff's contract.

105. Defendant took these actions with full knowledge that the principals of Route 9 are Orthodox Jews and that they intended on developing the Property to provide housing units

that would likely be purchased by Orthodox Jews; this knowledge having been acquired by Defendant as a result of the meeting which took place on March 23, 2016 between representatives of Route 9 and the Township Planner.

106. Defendant's actions have proximately caused damage to Plaintiff, for which Defendant is liable to Plaintiff.

107. Plaintiff has previously served a Notice of Tort Claim Against Public Entity to the Township for the tortious interference with Route 9's contract with Guttman LLC on December 15, 2016.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. An award of compensatory damages against Defendant in favor of the Route 9 as the Court deems just for the loss of its rights under the United States Constitution, the Fair Housing Act, the Religious Land Use and Institutionalized Persons Act, and New Jersey law incurred by Plaintiff and caused by the Defendant's actions;
2. An award to Plaintiff of full costs and attorneys' fees arising out of Defendant's actions and land use decisions and out of this litigation; and
3. Such other and further relief as this Court may deem just and appropriate.

#### **DEMAND FOR JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action on all issues so triable.

Respectfully submitted by the Plaintiff this 16<sup>th</sup> day of April, 2018.

**PAUL V. FERNICOLA &  
ASSOCIATES, LLC**

/s/ Paul V. Fernicola \_\_\_\_\_

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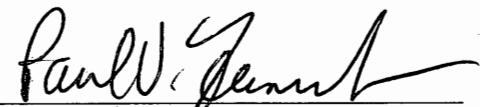
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**CERTIFICATION**

I hereby certify that pursuant to Local Civil Rule 11.2, that this matter is not the subject of any other actions pending in any Court or of a pending arbitration proceeding, no other action or arbitration is contemplated and no other parties must be joined in this action.

PAUL V. FERNICOLA & ASSOCIATES, LLC  
Attorneys for Plaintiff, 1940 Route 9, LLC

By:   
PAUL V. FERNICOLA, ESQ.  
I.D. No. 011711990

Dated: April 17, 2018